

DEPARTMENT OF STATE REVENUE

REVENUE RULING 2001-05ST

JUNE 28, 2001

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE I

Sales/Use tax: Application of sales/use tax to assignee of lease.

Authority: Ind. Code 6-2.5-2-1, 6-2.5-4-10(a).

The taxpayer requests the Department to rule on the collection of sales tax on leases by an assignee.

ISSUE II

Sales/Use tax: Conditional sales.

Authority: Ind. Code 6-2.5-2-1, 6-2.5-8-8

The taxpayer requests the Department to rule on the collection of sales tax and/or the securing of an exemption on a conditional sale transaction.

STATEMENT OF FACTS I

The taxpayer ("Bank") is an Indiana based financial institution involved in the assignment of leases and conditional sales. The bank's involvement is as the assignee of the leases and not as lessor or lessee. The Bank requests the Department to rule on the collection of sales tax on leases by an assignee. The first issue, the assigned lease, is described by the Bank as when "a lease is perfected between the lessor and lessee of tangible personal property. The stream of payments is assigned to a third party for collection of payments. The assignee does not take title to the property. Title remains with the lessor. The assignee does acquire a security interest in the property. Title to the property may be taken by the assignee if the lease payments are defaulted."

DISCUSSION I

IC 6-2.5-4-10(a) states, “[a] person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person.” The lessor is responsible for the collection of sales tax. “The retail merchant shall collect the [state gross retail] tax as agent for the state.” IC 6-2.5-2-1. The lessor may, by agreement, assign an agent (de facto lessor) to collect the lease payment and sales tax. This agreement is accomplished through a properly executed assignment agreement. The lessor, however, remains secondarily liable if the assignee fails to collect the tax.

RULING I

The lessor is required to collect sales tax unless a specific agreement between the assignee [Bank] and the lessor exists. The lessor may, by agreement, assign an agent (de facto lessor) to collect the lease payment and sales tax. This agreement is accomplished through a properly executed assignment agreement. The lessor, however, remains secondarily liable if the assignee fails to collect the tax.

STATEMENT OF FACTS II

The Bank describes the second issue, conditional sales, as follows; “a broker arranges sale of tangible personal property between a retail merchant and a buyer. The broker finances the transaction. The streams of payment are assigned to a third party for collection.”

DISCUSSION II

The responsibility for the collection of sales tax and of the securing of an exemption certificate lies with the retail merchant. In the instant case, the party responsible for the collection of tax is the seller and not the third party. IC 6-2.5-2-1 states, “the retail merchant shall collect the tax as agent for the state.” To be considered a retail merchant, a person must be “engage[d] in selling at retail.”

The seller may, by agreement, assign the collection of the payments and sales tax to a third party. The seller, however, remains secondarily liable if the assignee fails to collect the tax. The retail merchant in a conditional sales agreement is responsible for securing the exemption certificate. IC 6-2.5-8-8.

RULING II

A retail merchant shall collect sales tax as agent for the state in a conditional sale. IC 6-2.5-2-1. The seller, as the retail merchant in the conditional sales agreement, is responsible for securing the exemption certificate. IC 6-2.5-8-8. The lessor should advise the assignee if an exemption certificate has been secured.

The seller may, by agreement, assign the collection of the payments and sales tax to a third party. The seller, however, remains secondarily liable if the assignee fails to collect the tax. The retail merchant in a conditional sales agreement is responsible for securing the exemption certificate.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, changes in statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

INDIANA DEPARTMENT OF REVENUE